

difficult to reconcile all the acts and powers of Congress and the State Governments at that time, with any consistent and precise political theory; and the failure of the experiment tends to confirm the opinion, that the elements which entered into the structure of the old confederacy, were incoherent and self-contradictory. The Committee are inclined to believe, as they have already remarked, that the future historian will consider the whole period in question as a revolutionary one, and the form of the government as unsettled and fluctuating, until it was finally fixed, for the first time, by the adoption of the present Constitution.

2. But the Committee deem it unnecessary to dwell upon this point, since, were it even admitted that the States, at the time when they formed the Constitution, were distinct communities, politically independent of each other, it would by no means follow, as the Convention of South Carolina appears to suppose, that they are still in that condition, and that the Union is a League or Confederacy of mutually and absolutely independent States. The rights and obligations of the parties to a contract, are determined by its nature and terms, and not by their condition previously to its conclusion. As respects the latter point, the only question is, were the parties legally, or in cases when they are not subject to a common government, morally capable of making such a contract? If this question be answered in the affirmative, the previous condition of the parties, in other respects, is immaterial; and in order to ascertain to what the contract binds them, we have only to inquire what the contract is.

Now there can be no doubt, that independent States are morally as capable of forming themselves into a body politic, as independent individuals. A great proportion of the political societies which now exist, or of which we know the history, were constituted in this way. Hence, were it even admitted, that the States were distinct and independent communities at the time when they framed the constitution, the fact would no more prove; that they are distinct and independent communities now, than the fact that the two parties to a contract of marriage were single before its conclusion goes to prove that they are single afterwards. If the States were, at the time when they framed the constitution, as there cannot be a doubt, morally capable of forming a contract, involving the entire surrender of their political independence, it is quite apparent that in order to ascertain their rights and obligations under the constitution, we have to look exclusively to the nature and terms of that